

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.814 of 2023

Arising Out of PS. Case No.-15 Year-2021 Thana- AIRPORT District- Patna

Dev Ashish Hans @ Dev Ashish Lal Hans @ Randhir, son of Hira Lal Hans,
resident of village- Pulmallik, P.S- Sahebpur Kamal, District - Begusarai,
Bihar.

... .. Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Home, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The City Superintendent of Police, Patna.
5. The Station House Officer, Hawaii Adda Police Station, Patna.
6. Randhir Kumar, Sub Inspector, Hawaii Adda Police Station (Investigating Officer).
7. Ruchika Patel, daughter of Ram Janam Prasad, resident of Gulab City Apartment, G/01, Mahuabag Road, Jagdev Path, P.S- Hawaii Adda, District- Patna-800014.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rakesh Kumar Samrendra, Advocate Mr. Harsh Vardhan, Advocate
For the State	:	Mr. Suman Kumar Jha, A.C. to AAG-3
For the Resp. No.7	:	Mr. Vinod Kumar, Advocate Mr. Rudrank Shivam Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT
Date : 10-09-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent
no.7.

2. The present criminal writ petition has been
filed for quashing the F.I.R. vide Hawaii Adda P.S. Case No.15



of 2021 registered for the offence under sections 341, 323, 504 & 498-A/34 of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act as well as the charge-sheet dated 19.07.2022 filed against the petitioner.

3. The informant (respondent no.7) is the aunt of the petitioner. As per the F.I.R., the marriage between the uncle of the petitioner namely, Dr. Parmanand Paramhans and the informant was solemnized on 19.04.2015 as per Hindu customs and rites. After the marriage, the elder brother-in-law, his wife and three sons including the petitioner used to instigate and abuse her with filthy language. They also used to demand money from the informant and on account of non-fulfillment of said demand, they used to assault her. It has also been alleged that since the father of the informant is a retired Government employee, it was not possible for her father to fulfill the demand of the petitioner.

4. Learned counsel for the petitioner submits that the residential and other properties of his grandfather namely, late Batoran Mahto was amicably partitioned with mutual consent among his two sons i.e. the father of the petitioner namely, Hiralal Mahto and his uncle Dr. Paramanand Paramhans on 25.10.2017 by way of a partition deed prepared



in presence of the Sarpanch and other respected members of the society. After the partition, the two branches of the family i.e. his father and his uncle were living separately and therefore, there was no occasion for the petitioner to enter into the house of his uncle and assault her or to make any demand of money.

5. Learned counsel for the petitioner further submits that the informant (respondent no.7) did not specify any specific date regarding commission of such offence. She was not examined medically in support of her claim that she was assaulted by the accused persons.

6. It has been submitted by learned counsel for the petitioner that earlier the respondent no.7 (informant) had filed a complaint Case No.3985(c) of 2019 dated 06.09.2019 in the Court of learned Chief Judicial Magistrate, Patna under sections 323, 498A and 120-B of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act, 1961 against five accused persons i.e. her husband, elder brother-in-law (*Jeth*), sister in-law (*Jethani*) and their two sons namely, Nand Kishore Kumar and Mritunjay Kumar. In the said complaint petition, the respondent no.7 (informant) made allegation of physical and mental torture and demand of dowry of Rs.5,00,000/- along with a car, in which the learned Magistrate



vide order dated 07.01.2020 had taken cognizance against all the five above named accused persons for the offence under sections 498-A and 323 of the Indian Penal Code. It has also been submitted that all four accused persons except the husband of the respondent no.7 (informant) were enlarged on bail upon surrender by the learned Magistrate. The husband of the respondent no.7 (informant) filed an anticipatory bail application before the learned District & Sessions Judge, Patna wherein he was directed to explore mediation to resolve the dispute and during the mediation process, the respondent no.7 (informant) became ready to cohabit and stay with her husband and accordingly, the respondent no.7 went to Begusarai where she stayed for some time and then returned back to her parents' house on 05.01.2021 and while returning to her parents house, the respondent no.7 made a signed declaration that she was returning to her parents house with sister and brother-in-law in safe manner and thereafter, the present F.I.R. has been filed by the respondent no.7 (informant).

7. It has further been submitted by learned counsel for the petitioner that though in the complaint case, the petitioner was not an accused but, in the present F.I.R. he has been made an accused with an ulterior motive. The petitioner



has successfully qualified in the 66th Joint Competitive Examination conducted by the Bihar Public Service Commission, Patna and thereupon the petitioner was recommended for appointment in the cadre of Bihar Police Service as Dy. S.P. and thereafter the petitioner was appointed vide notification dated 03.12.2022 as Dy. S.P. in the cadre of Bihar Police on probation, however the status of the petitioner was put on hold since he is an accused in the present F.I.R.

8. It has been argued that the petitioner was pursuing his Bachelor of Technology (B.Tech.) from Indian Institute of Technology, Roorkee from the year 2012 to 2017, subsequently he also pursued Masters in Technology from the same institute. Thereupon during the COVID-19 pandemic, he remained at his paternal house at Begusarai from March, 2020 to August, 2020 and admittedly, the respondent no.7 (informant) was not residing there during this period. The petitioner for preparing various competitive examinations moved to New Delhi and stayed there from the year 2021 to 2022.

9. Learned counsel for the petitioner while making his submissions refers to para-30 and 31 of the case diary wherein the husband of the respondent no.7 (informant)



has clearly stated that the petitioner was hardly coming to his hometown and was pursuing his studies as this statement has also been supported by independent witness at para-31 of the case diary.

10. It is also submitted that the present F.I.R. is a mere reiteration of the same occurrence already stated in the previous complaint case. The period of occurrence in the earlier complaint case is from 19.04.2015 to 06.09.2019 whereas in the present F.I.R. the period of occurrence is from 19.04.2015 to 13.01.2021, and no occurrence is even alleged to have taken place between the interregnum period i.e. 07.09.2019 and 13.01.2021. The allegations set in the F.I.R. are also vague and general in nature with no specific overt act alleged against the present petitioner.

11. Learned Senior Counsel for the petitioner has relied upon the following judgments :-

(i) *State of Haryana vs. Bhajan Lal*

reported as 1992 (Suppl.) 1 SCC 335;

(ii) *Geeta Mehrotra & Anr. vs. State of*

UP reported as (2012) 10 SCC 741.

(iii) *Mahmood Ali and Ors. vs. State of*

U.P. and Ors. reported as 2023 SCC



Online SC 959.

(iv) Achin Gupta vs. State of Haryana

reported as ***2024 SCC OnLine SC 759.***

12. In this case, the respondent no.7 (informant) has filed a counter affidavit. In the counter affidavit, the respondent no.7 vehemently denies and disputes the statement that after her marriage with the uncle of the petitioner she was shifted at PUSA campus, rather she was residing at her matrimonial home in Begusarai even after her husband had found a job as Research Assistant in ICAR, PUSA, Samastipur. In fact, despite the repeated requests made by the respondent no.7 (informant), her husband i.e. the uncle of the petitioner denied all requests of taking her with him to the PUSA Campus and forced her to stay with his brother and the family members, where the respondent no.7 (informant) was subjected to grave mental and physical agony at the hands of the petitioner and his family members.

13. It has also been stated in the counter affidavit that the deed of partition is an *antedated* and fabricated document and as such, cannot be relied upon since the partition never took place. The deed of partition is neither prepared on a judicial stamp paper nor is the said document



registered as mandated by the Indian Registration Act, 1908. The only purport of the said document is to illustrate that the husband of the respondent no.7 and the father of the petitioner were living separately and independently to fall out of the ambit and evade the purpose of section 498-A of Indian Penal Code.

14. The respondent no.7 (informant) has brought on record the complaint case no. 194(c) of 2021 dated 20.01.2021 filed at the instance of her husband against the respondent no.7 and her family members. In the aforementioned complaint case, the husband of the respondent no.7 on oath has stated before the Magistrate that he along with the mother of the present petitioner were alone at home when the informant and her family members came to the very same partitioned home to steal jewellery, cash and other belongings from their home.

15. In reply to the submission regarding declaration signed by the respondent no.7 while returning to her parents house, it has been stated that the respondent no.7 had put her signature of the said declaration on coercion as she was locked in the house by her sister-in-law and her nephews including the petitioner and under these circumstances, the respondent no.7 was coerced to sign the said declaration and



only thereafter the accused persons permitted her to leave their house.

16. It has also been stated in the counter affidavit that the medical report dated 03.01.2021 which indicates that the informant was assaulted but was conveniently and selectively omitted from the present petition. The said medical report of the respondent no.7 finds mention in the order of the Court below, by which the anticipatory bail application preferred by her husband has been rejected. It has also been stated that the complaint case no.3985(c) of 2019 and the present F.I.R. have been instituted by the respondent no.7 for two different cause of action.

17. It has also been stated in the counter affidavit that the submission of the petitioner that he has been implicated in this case with a view to ruin his career as he has been selected for appointment on the post of Dy.S.P. vide notification dated 03.12.2022, is misconceived as the present F.I.R. has been lodged on 13.01.2021 whereas the notification came to be issued in 03.12.2022. Further, the involvement of the petitioner in the assault of the respondent no.7 gets corroborated by the medical report dated 03.01.2021 and the charge-sheet submitted by the I.O. wherein the petitioner was



found involved.

18. I have considered the submissions of the parties and perused the materials on record. From reading of the F.I.R. and other materials available on record, it appears that prior to lodging of the present F.I.R. the respondent no.7 (informant) had filed a Complaint Case No.3985 of 2019 against her elder brother-in-law, wife of the said elder brother-in-law and their two sons. In the said complaint case, the petitioner was not an accused but subsequently, in the present F.I.R., which is mere reiteration of the same occurrence already stated in the previous complaint case, the petitioner has been named as an accused. It also appears that respondent no.7 (informant) is the aunt of the petitioner. The marriage between the uncle of the petitioner and the respondent no.7 (informant) was solemnized in the year 2015. There is no allegation against the petitioner except general and omnibus allegations. The petitioner being a junior member of the family is not expected to demand dowry and torture his aunt.

19. The Hon'ble Supreme Court in the case of *Mahmood Ali and Others vs. State of U.P.* (supra) while considering an application in which the quashment of the criminal proceeding was sought on the ground of frivolous and



vexatious proceedings instituted with an ulterior motive for wreaking vengeance, has held that the Court has a duty to examine the F.I.R./complaint as the complainant/informant may draft the F.I.R./complaint meticulously ensuring that it include all necessary details and elements of the alleged offence. It is not sufficient for the Court to solely rely on the averments of the F.I.R./complaint to determine the essential ingredients of the offence. It will be relevant to quote paragraph no.13 of the aforesaid decision, which reads as under:-

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary



pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

20. Looking to the facts of this case, it will be



relevant to quote paragraph nos. 18, 20 and 25 of the decision of the Hon'ble Supreme Court rendered in the case of ***Achin Gupta vs. State of Haryana and Another (supra)***, which read as under:-

18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

20. It is now well settled that the power under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr.P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to



give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute. (emphasis supplied)”

21. In the case of ***Geeta Mehrotra & Anr. v. State of U.P. (supra)***, the Hon’ble Supreme Court in paragraph nos.19 & 20 has observed as under: -

“19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact



borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in



the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts.”

The view taken by the judges in this matter was that the courts would not encourage such disputes.”

22. Considering the law laid down by the Hon'ble Supreme Court in the cases of ***Mahmood Ali and Others vs. State of U.P.*** ; ***Achin Gupta vs. State of Haryana and Anr.*** and ***Geeta Mehrotra & Anr. v. State of U.P.*** (supra), I am of the view that this is a fit case in which the quashing application of the petitioner should be entertained under section 482 of the Cr.P.C. as from the reading of the F.I.R. and other materials on record, it appears that there is general and omnibus allegation against the petitioner, who is the nephew (*Bhatija*) of the respondent no.7 (informant). Moreover, it also appears from the record that in complaint case which had been filed by the respondent no.7 prior to lodging of the present F.I.R. the



petitioner was not made an accused but in the present F.I.R all the family members of the husband of the informant including this petitioner have been made accused though there is no material to directly connect the petitioner with the alleged crime. He has been made accused merely because he is the nephew (*Bhatija*) of the informant. This tendency of making all the family members of the husband of the informant as accused has been deprecated by the Hon'ble Supreme Court.

23. Furthermore, the F.I.R. does not disclose any specific allegation against the petitioner and the same arises out of a matrimonial dispute. A plain reading of the FIR, it appears that the allegations levelled against the petitioner are vague as the informant did not specify any specific date and time regarding commission of such offence.

24. In these circumstances, the petitioner cannot be asked to undergo trial because the F.I.R. does not disclose specific allegation to persuade this Court to take a view that the petitioner should undergo trial. The petitioner is a junior member of the family i.e. nephew of the informant and it appears that he has not been indulged in physical and mental torture of the informant, who is his aunt.

25. In the case of *State of Haryana & Ors. vs.*



Bhajanlal & Ors. reported in ***1992 (Suppl.) 1 SCC 335***, the Hon'ble Supreme Court has delineated the circumstances where an F.I.R. or the charge-sheet can be quashed, which are as follows:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the



Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

26. In view of the aforesaid reasons discussed hereinabove and applying the law laid down in the case of ***Bhajan Lal*** (supra), I am of the view that the present F.I.R., so far as the present petitioner is concerned, has been instituted with an ulterior motive and also as an afterthought and therefore, the same is fit to be quashed.



27. In view of the aforesaid discussions, this application is allowed. Accordingly, the F.I.R. vide Hawaii Adda P.S. Case No.15 of 2021 registered for the offence under sections 341, 323, 504, 498-A/34 of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	24.06.2024
Uploading Date	10.09.2024
Transmission Date	

